Diljit Kaur a/p Puran Singh v Pentadbir Tanah Gombak & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO S2-21-16 OF 1998
KAMALANATHAN RATNAM J
11 AUGUST 1998

Land Law *— Restraints on dealings — Caveats — Cancellation of — Application for cancellation of caveat by registrar of land be declared void and no effect — Whether applicant ought to have appealed under s 418 and not rely on s 417 — National Land Code 1965 ss 417 & 418*

Land Law *— Restraints on dealings — Caveats — Service of notice of change of address — Whether notification of change of address must be in compliance with Form 26A — Whether proper notice has been given by way of registered letter — National Land Code 1965 s 379(1)*

Land Law *— Restraints on dealings — Caveats — Notice of intended removal of caveat — Notice forwarded to address stated in caveat — Applicant notified registrar of change of address by way of registered letter — Whether registrar entitled to effect service by way of substituted service and publication in Gazette — National Land Code 1965 ss 431(1)(e) & 432(1)(b)*

The applicant entered a private caveat in respect of a piece of land, giving a particular address in the caveat. By way of registered letters, the applicant notified the respondent of her change of address. The applicant then discovered that the caveat had been cancelled. She also discovered that Form 19C, ie the notice of intended removal of caveat issued by the respondent was forwarded to the address as had been stated in the caveat. The applicant averred that she never received the notice. The applicant filed an application under s 417(1) of the National Land Code 1965 ('the NLC') and prayed for an order that the cancellation of the caveat be declared void and of no effect. The respondent raised a preliminary objection that the applicant ought to have appealed pursuant to s 418 of the NLC. With regard to the service of Form 19C, the respondent submitted that he had effected service by way of substituted service pursuant to s 431(1)(e) of the NLC and in compliance with s 432(1)(b) published a notice in the Gazette. With regard to the notification of the change of address, the respondent argued that the applicant had failed to comply with s 379(1) of the NLC which requires that notification of change of address to be in compliance with Form 26A.

Held, upholding the preliminary objections and dismissing the application:

(1) The expression 'any judgment or order given or made in any proceedings' appearing in s 417(1) is not confined only to a judgment or order given or made in the impugned proceedings

but also includes any existing valid order of the court made in previous proceedings relating to the same land. In the present case, there has been no judgment or order upon which this court is asked to direct the registrar to act, to give effect to such judgment or order. What has been done is an administration act of the registrar in cancelling the caveat. Against that act, there is a specific section in the NLC under which the applicant ought to have proceeded, ie s 418. Having failed to proceed pursuant to a specific section that provides the specific relief, the applicant could not rely on s 417 (see p 745G–I); *Manilal & Sons Sdn Bhd v Pentadbir Tanah Daerah Kulim* [1997] 3 MLJ 573 followed.

(2) No proper notice of change of address as required by s 379(1) of the NLC — in which the requirement carried the mandatory 'shall' in it — was given to the respondent and the notice of change did not conform to Form 26A of the NLC. Therefore, no proper notice was in fact given to the respondent and in the circumstances, the respondent acted within his rights when he proceeded to serve Form 19C by way of substituted service (see p 746D–E).

[Bahasa Malaysia summary

Pemohon telah memasukkan kaveat persendirian berkenaan dengan sebidang tanah, dengan memberikan suatu alamat tertentu dalam kaveat tersebut. Menerusi surat berdaftar, pemohon telah memaklumkan pertukaran alamat kepada penentang. Pemohon kemudiannya mendapati kaveat tersebut telah dibatalkan. Beliau juga mendapat tahu bahawa Borang 19C, iaitu notis tentang niat untuk membatalkan kaveat yang dikeluarkan oleh penentang telah dihantar kepada alamat seperti yang tercatat dalam kaveat tersebut. Pemohon menegaskan bahawa beliau tidak pernah menerima notis tersebut. Pemohon memfailkan permohonan di bawah s 417(1) Kanun Tanah Negara 1965 ('KTN') dan memohon satu perintah bahawa pembatalan kaveat diisytiharkan terbatal dan tidak memberi kesan undang-undang. Penentang membangkitkan bantahan permulaan bahawa pemohon seharusnya merayu menurut s 418 KTN. Berkenaan dengan penyampaian Borang 19C, penentang berhujah bahawa beliau telah melaksanakan penyampaian melalui penyampaian ganti menurut s 431(1)(e) KTN dan sebagai mematuhi s 432(1)(b) telah menerbitkan notis dalam Warta. Berhubung dengan pemberitahuan pertukaran alamat, penentang berhujah bahawa pemohon telah gagal mematuhi s 379(1) KTN yang menghendaki bahawa pemberitahuan pertukaran alamat mematuhi Borang 26A.

Diputuskan, membenarkan bantahan permulaan dan menolak permohonan:

(1) Ungkapan 'apa-apa penghakiman atau perintah yang diberi atau dibuat dalam mana-mana prosiding' yang menonjol dalam

s 417(1) tidak terbatas hanya kepada penghakiman atau perintah yang diberi atau dibuat dalam prosiding yang dipersoalkan tetapi juga termasuk sebarang perintah sah mahkamah yang wujud yang dibuat dalam prosiding dahulu berkaitan dengan tanah yang sama. Dalam kes ini, tidak ada sebarang penghakiman atau perintah di mana mahkamah diminta untuk mengarahkan pendaftar bertindak agar keputusan atau perintah mempunyai kesan. Apa yang telah dilakukan ialah tindakan pentadbiran oleh pendaftar dalam membatalkan kaveat. Bertentangan dengan tindakan itu, terdapat seksyen yang spesifik dalam KTN di bawah mana pemohon sepatutnya meneruskan, iaitu s 418. Setelah gagal meneruskan prosiding menurut seksyen spesifik yang memperuntukkan relief spesifik, pemohon tidak boleh bergantung pada s 417 (lihat ms 745G–I); *Manilal & Sons Sdn Bhd v Pentadbir Tanah Daerah Kulim* [1997] 3 MLJ 573 diikut.

(2) Tiada notis pertukaran alamat yang sempurna seperti yang dikehendaki oleh s 379(1) KTN — di mana keperluan tersebut membawa 'hendaklah' yang mandatori dalamnya — telah diberi kepada penentang dan notis pertukaran alamat tidak mengikut Borang 26A KTN. Maka, tiada notis yang sempurna pada hakikatnya telah diberikan kepada penentang dan dalam keadaan tersebut, penentang bertindak dalam lingkungan haknya apabila beliau terus menyampaikan Borang 19C melalui penyampaian ganti (lihat ms 746D–E).]

Notes

For cases on caveats, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 2241–2419.

Case referred to

Manilal & Sons Sdn Bhd v Pentadbir Tanah Daerah, Kulim [1997] 3 MLJ 573 (folld)

Legislation referred to

National Land Code 1965 ss 323, 379(1), 417(1), 418, 431(1)(e), 432, (1)(a)(i), (ii), (b), Form 19B, Form 19C, Form 26A

Diljit Kaur (acting on her own behalf) for the plaintiff.

Nik Suhaimi bin Nik Sulaiman (Penolong Penasihat Undang-Undang) for the first respondent.

MF Choo (*Wong Choo & Partners*) for the second respondent.

T Kuhendran (*Albar Zulkifly & Yap*) for the fourth respondent.

Cur Adv Vult

Kamalanathan Ratnam J:

Facts

The applicant entered a private caveat on 17 October 1994 in respect of land held under HS (M) 2309 Lot 4924 Mukim Hulu Kelang ('the property') after the second respondent failed to execute a sale and purchase agreement. The address given by the applicant in Form 19B when entering the caveat pursuant to s 323 of the National Land Code 1965 ('the NLC') was No 6 Lorong Sentul Endah, off Jalan Sentul Murni, 51000 Kuala Lumpur.

On 12 December 1994 by way of a registered letter the applicant notified the Pentadbir Tanah Gombak ('the first respondent') of her change of address which was stated as No 24, Jalan L1, Taman Melawati, Fasa 6A, Hulu Kelang, 53100 Kuala Lumpur.

By way of another letter dated 23 November 1995 which was sent by personal service, the applicant informed the first respondent of another change of address which was stated as 612, Jalan J-14, Fasa 6, Taman Melawati, 53100 Kuala Lumpur. The first respondent acknowledged receipt of the same.

On 11 June 1996, the applicant commenced at the Kuala Lumpur High Court Civil Suit No S5–22–280–96 for specific performance against the second respondent herein. From the defence pleaded, the applicant gathered that the property had been sold to a third party. The second respondent refused to disclose the identity of the purchaser. On making a search, the applicant discovered that the private caveat she had entered had been cancelled on 26 December 1996 and that the property had been transferred to the fourth respondent on 11 March 1997.

The applicant then discovered that Form 19C which was the notice of intended removal of caveat issued by the first respondent and dated 8 May 1995 was forwarded to the address as had been stated in the caveat.

Case for the applicant

The applicant averred that she never received the said Form 19C. She then wrote two letters to the first respondent in respect of the cancellation of the caveat and having received no response, filed this application (encl 1) by which she prayed for an order that the cancellation of the private caveat entered by her be declared void and of no effect, that the said caveat be reinstated until the conclusion of Civil Suit S5–22–280–96, that the first respondent do expunge the registration of the said title to the fourth respondent or alternatively an order that the said registration of the title to the fourth respondent be declared void and of no effect, and costs.

The preliminary objections by the first respondent

The first respondent raised the objection that the applicant ought to have appealed pursuant to s 418 of the NLC which reads:

Appeals to the Court

(1) Any person or body aggrieved by any decision under this Act of the State Director, the Registrar or any Land Administrator may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.

(2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make such order thereof as it considers just.

(3) In this section 'decision' includes any act, omission, refusal, direction or order.

The first respondent argued that this application which was made pursuant to s 417(1) of the NLC ought to be rejected.

Section 417(1) reads:

General authority of the Court

(1) The Court or a Judge may by order direct the Registrar or any Land Administrator to do all such things as may be necessary to give effect to any judgment or order given or made in any proceedings relating to land, and it shall be the duty of the Registrar or Land Administrator to comply with the order forthwith.

With regard to the service of Form 19C the first respondent submitted that he had effected service by way of substituted service pursuant to s 431(1)(e) of the NLC which reads:

Methods of service

(1) Without prejudice to any other method of service, a notice may be served on a person or body for the purposes of this Act —

...

(e) by substituted service in accordance with section 432.

Section 432 which deals with service by way of substituted service reads as follows:

Substituted service

(1) The Registrar, where he is satisfied that a notice affecting land in the State cannot be served personally or by post (either because the person to be served is evading service or for some other reason), may order service to be effected —

(a) by affixing a copy of the notice in a conspicuous position —

(i) on the land where possible; and

(ii) on a court-house, mosque or penghulu's office or *balai*, or in a market or other public place, in the area in which the land is situated; and

(b) by publishing a copy of the notice in the Gazette and, if he thinks fit, in one or more of the newspapers circulating in the State.

(2) For the purposes of sub-section (1) a notice relating to document of title to any land shall be deemed to be a notice affecting the land.

In compliance with s 432(1)(b) of the NLC, the first respondent published a notice in the Gazette vide Gazette No 967 which was exhibited to his affidavit to oppose the application.

Since there was no response from the applicant and after the expiration of two months as stated in Form 19C, the first respondent cancelled the caveat and an indorsement was accordingly made on 26 December 1996 With regard to the notification of the change of address the first respondent argued that the applicant had failed to comply with s 379(1) of the NLC which reads:

> Changes of address by proprietors, etc
>
> (1) Any person or body in whom any alienated land or interest is for the time being vested, or at whose instance a caveat has been entered in respect of any land or interest, shall within the prescribed time notify the Registrar in Form 26A of a change of his address, and the Registrar shall make an appropriate record thereof.

The requirement of the notification of the change of address was to be in compliance with Form 26A.

In reply, Ms Diljit Kaur arguing in person contended that the court ought to look at the substance and not the form. So long as she had notified by letters of both her changes of address, that ought to suffice. Referring to the Gazette Notification which was exhibited she contended that the said Gazette Notification failed to reproduce the entire Form 19C.

Findings of the court

Section 417 or 418 of the NLC applicable

Clearly this application made under s 417 of the NLC must fail. In *Manilal & Sons Sdn Bhd v Pentadbir Tanah Daerah, Kulim* [1997] 3 MLJ 573, the Court of Appeal held that the expression 'any judgment or order given or made in any proceedings' appearing in s 417(1) is not confined only to a judgment or order given or made in the impugned proceedings but also includes any existing valid order of the court made in previous proceedings relating to the same lands.

In the case before me, there has been no judgment or order upon which this court is asked to direct the registrar to act, to give effect to such judgment or order. What has been done is an administrative act of the registrar in cancelling the caveat. Against that act there is a specific section in the NLC under which the applicant ought to have proceeded. She had three months to appeal from the date the cancellation of the caveat was communicated to her. In this case, the applicant does not even say when she made the search and discovered for the first time that the caveat was cancelled. In any case, she could have even applied for extension of time. Having failed to proceed pursuant to a specific section that provides the specific relief, namely s 418, it is my judgment that the applicant cannot rely on s 417 of the NLC.

Non-compliance with Form 26A of the NLC

The applicant contends that so long as she has intimated to the first respondent by way of letters and which letters the first respondent had acknowledged receipt of, there is no need for her to comply with Form 26A of the NLC. I do not agree. The NLC regulates all dealings relating to land. The forms provided in respect of the relevant sections provide the manner in which the said sections are to be complied with. According to the first respondent, the Form 19C sent to the address stated on the caveat was returned with the note that the applicant had moved. The first respondent then proceeded to serve pursuant to s 432(1)(a) and (b). The first respondent had annexed an exhibit to his affidavit (exh AA-6) which showed that a notice under Form 19C was also displayed on the land in question, on the notice board of the penghulu's office at Hulu Kelang and also on the notice board of the District Land Office, Gombak. This was fully in compliance with s 432(1)(a)(i) and (ii) of the NLC.

Further, in compliance with s 432(1)(b) of the NLC the first respondent also published a copy of the notice in the Gazette. Since no proper notice of change of address as required by s 379(1) of the NLC was given to the first respondent — and I must add that this requirement carried the mandatory 'shall' in it — and since the notice of change did not conform to Form 26A of the NLC, I find that no proper notice was in fact given to the first respondent. In the circumstances, the first respondent acted within his rights when he proceeded to serve Form 19C by way of substituted service.

Gazette Notification not in compliance with Form 19C

I reproduce herewith Gazette Notification No 967:

WARTA KERAJAAN NEGERI SELANGOR

1850 24 Oktober 1996

No 967

Kepada Diljit Kaur a/p Puran Singh beralamat di 6 Lorong Sentul Endah, off Jalan Sentul Murni, Kuala Lumpur, dan yang atas permintaan Kaveat Persendirian Berdaftar No 4320/94J49F167 adalah dimasukkan ke dalam hakmilik bagi tanah yang diperihalkan dalam Jadual di bawah ini.

Bahawasanya kaveat di atas itu adalah dimaksudkan supaya mengikut tanah itu sendiri/kepentingan khusus yang diperihalkan dalam Jadual tersebut.

Dan bahawasanya tuan punya tanah penerima pajak/penerima pajak kecil/pemegang gadaian dalam kepentingan yang diperihalkan telah membuat permohonan kepada saya supaya kaveat yang tersebut itu dipotong.

Adalah diberi notis bahawa, pada menjalankan kuasa-kuasa yang diberi oleh s 326 Kanun Tanah Negara, saya akan apabila habis tempoh dua bulan dari tarikh penyampaian notis ini, atau sesuatu tempoh yang lebih lanjut (jika ada) sebagaimana yang diperintah oleh mahkamah memotong kaveat itu.

JADUAL TANAH DAN KEPENTINGAN

Mukim — Hulu Klang No PT — 4924, Jenis dan No Hakmilik — HS (M) 2309 Bahagian tanah (jika ada) — semua.

Bertarikh 30 September 1996
[PTDG 19 Mei 1996 SK 6]

MOHAMMAD ROHIB BIN MISNAN
Pentadbir Tanah
Gombak

Other than the fact that the title to Form 19C, namely 'Notis Berkenaan Dengan Cadangan Hendak Memotong Kaveat' is not stated in the Gazette Notification No 967 the rest of Form 19C is contained in it. The omission of the title to my mind is of no consequence. The Gazette Notification in itself contains the fact that notice to cancel the caveat is being given. That is sufficient.

In the circumstances, the preliminary objections raised are upheld. The application (encl 1) is dismissed with costs.

Application dismissed.

Reported by Jafisah Jaafar